

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

| | | |
|---------------------------|---|--------------|
| BOARHEAD FARM AGREEMENT : | : | |
| GROUP, | : | |
| | : | CIVIL ACTION |
| | : | |
| v. | : | NO. 02-3830 |
| | : | |
| ADVANCED ENVIRONMENTAL | : | |
| TECHNOLOGY CORPORATION, | : | |
| ET. AL. | : | |
| | : | |
| Defendants. | : | |

**MEMORANDUM OF LAW ON BEHALF OF PLAINTIFF BOARHEAD FARM
AGREEMENT GROUP AND SETTLING DEFENDANTS IN SUPPORT OF MOTION
FOR ORDER OF DISMISSAL WITH PREJUDICE**

This is an action under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.* (“CERCLA”) and the Pennsylvania Hazardous Sites Cleanup Act, 35 Pa. Cons. Stat. § 6020.101 *et seq.* (“HSCA”) seeking contribution for the recovery of costs incurred and to be incurred in response to the release or threatened release of hazardous substances at the Boarhead Farms Superfund Site (the “Site”). Plaintiff Boarhead Farm Agreement Group (“Agreement Group”) is obligated to perform the remedy at the Site by virtue of Consent Decrees and other agreements entered into with the United States Environmental Protection Agency (“EPA”). The Agreement Group filed this lawsuit to seek contribution from other potentially responsible parties for a portion of the cleanup costs incurred at the Site.

The Agreement Group and Defendants Unisys Corporation, Plymouth Tube Company, Crown Metro, Inc., Emhart Industries, Inc., Novartis Corporation, Quikline Design and Manufacturing

Co., Rohm and Haas Company, and Simon Wrecking Co., Inc. (“Settling Defendants”) submit this Memorandum of Law in support of their Motion For Order of Dismissal with Prejudice.

On June 18, 2002, the Agreement Group filed a Complaint against twenty-three¹ Defendants, alleging that they were liable under CERCLA and HSCA and seeking contribution and declaratory relief in connection with the Site. Following settlement discussions, the Agreement Group has reached final settlement agreements with each of the Settling Defendants.

ARGUMENT

On June 30, 2004, this Court entered a Memorandum Order setting forth certain rulings concerning the dismissal of Defendants who enter into settlements with the Agreement Group. The enclosed proposed Order of Dismissal with Prejudice reflects those rulings. In summary, this Court held in the Memorandum Order that it has the authority to dismiss with prejudice settling parties from this action, and to bar cross-claims and contribution claims and future cross-claims and contribution claims against those settling parties. Memorandum Order at 5. This Court additionally held that the Uniform Comparative Fault Act will govern in determining the extent to which any non-settling defendant’s liability should be off-set by any settlement agreements with the Agreement Group. *Id.* at 8.

Following settlement negotiations, each of the Settling Defendants entered into an agreement with the Agreement Group to settle the Agreement Group’s claims against each of them in the within action. The proposed Order of Dismissal with Prejudice submitted herewith reflects the Court’s rulings in the June 30, 2004 Memorandum Order.

¹ Subsequent Amended Complaints were filed on August 26, 2003, February 21, 2003 and September 8, 2003. The Third Amended Complaint lists twenty-six Defendants.

CONCLUSION

For all of the foregoing reasons, Plaintiff Boarhead Farm Agreement Group and Settling Defendants respectfully request that the Court enter the proposed Order of Dismissal with Prejudice.

Respectfully submitted,

BALLARD SPAHR ANDREWS & INGERSOLL, LLP
A Pennsylvania Limited Liability Partnership

By: Glenn A. Harris /s/
Glenn A. Harris, Esquire
Plaza 1000, Suite 500, Main Street
Voorhees, New Jersey 08043
(856) 761-3400

Attorney for Plaintiff Boarhead Farm Agreement Group

Dated: July 20, 2004